

**U.S. Department of Labor**

Office of Administrative Law Judges  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

(856) 486-3800  
(856) 486-3806 (FAX)



**Issue Date: 09 October 2003**

Case No.: 2003-MSA-00004

In the Matter of

**D&F DEEP MINE BUCK DRIFT**  
Petitioner

v.

**U.S. DEPARTMENT OF LABOR,  
MINE SAFETY & HEALTH ADMINISTRATION (MSHA)**  
Party Opposing Petition

**DECISION AND ORDER**

This procedure arises under Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(c), and its implementing regulations found at 30 C.F.R. Part 44. On September 30, 2003, counsel for the Mine Safety and Health Administration submitted a "Consent Agreement between the Parties" executed by the parties.

The Consent Agreement provides for the following:

1. On September 17, 2002, the Petitioner, D&F Buck Mine Drift ("D&F"), filed a Petition for Modification pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 811(c), seeking to modify 30 C.F.R. § 75.1002(a), for its Buck Drift mine. D&F alleged that its proposed alternative method of compliance with the mandatory standard would at all times guarantee no less than the same level of protection as the standard.

2. Section 75.1002(a) provides:

Electrical equipment must be permissible and maintained in a permissible condition when such equipment is located within 150 feet of the pillar workings or longwall faces.

3. The purpose of the requested modification is to permit the use of a non-permissible dragline, a non-permissible battery operated locomotive and other non-permissible electrical equipment to operate within 150 feet of the pillar line at the Petitioner's mine.

4. The Buck Drift mine is a small anthracite mine located in Minersville, Pennsylvania, employing approximately four underground miners.

5. On May 23, 2003, the Administrator issued a Proposed Decision and Order ("PDO") denying the petition for modification filed by D&F. On June 13, 2003, D&F filed a Request for Hearing pursuant to 30 C.F.R. Part 44.14 and the case was referred to the Office of Administrative Law Judges

6. The settlement between the parties which is incorporated into this Consent Agreement modifies the language of the Administrator's May 23, 2003, PDO as follows:

a. The Petitioner is planning on installing the non-permissible electrical dragline at the monkey level at the mine. The Administrator has determined that this location is considered intake air, allowing the use of the Petitioner's electrical dragline in that area. The locomotive will be located in the gangway out by the last open crosscut.

b. The Petitioner's communication system shall be maintained at all times.

c. In lieu of a non-permissible electrical hand held drill, the Petitioner shall use a hand held air drill, when performing work in areas where equipment is required to be permissible.

d. The Petitioner's requested modification of § 75.1002(a) will at all times guarantee no less than the same level of protection as is provided by the standard and should be granted, subject to the terms and conditions stated herein.

7. The parties agree that the record in this case shall consist of the petition, the administrative file, including the investigative file, the Administrator's PDO and this Consent Agreement.

8. The parties agree that any order issued in this proceeding by the presiding Administrative Law Judge shall have the same effect as if made after a full hearing.

9. The parties agree to waive any further procedural steps before the presiding judge and the Assistant Secretary for Coal Mine Safety and Health.

Having reviewed the parties' consent agreement, I find that the agreement is consistent with the requirements of 30 C.F.R. § 44.27, and therefore it is approved. The Decision and Order of this Court shall be the final agency action.

SO ORDERED.

A

Robert D. Kaplan  
Administrative Law Judge

Cherry Hill, New Jersey

